No. 748

In the Supreme Court of the United States

October Term, 1954

KEITH M. BEATY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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No. 740

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The original opinion of the Court of Appeals affirming the judgment of the District Court (Pet. 45-63) is reported at 213 F. 2d 712. The order of this Court vacating the judgment and remanding the cause to the Court of Appeals for consideration in light of the net worth cases decided December 6, 1954[1] (Pet. 44), is reported at 348 U. S. 905. The

[1] *Holland* v. *United States*, 348 U.S. 121; *Friedberg* v. *United States*, 348 U.S. 142; *Smith* v. *United States*, 348 U.S. 147; *United States* v. *Calderon*, 348 U.S. 160.

opinion of the Court of Appeals reaffirming the judgment of the District Court (Pet. 37-42) has not been reported.

JURISDICTION

The judgment of the Court of Appeals was entered March 24, 1955 (Pet. 42-43), and the petition for a writ of certiorari was filed on April 21, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure.

QUESTION PRESENTED

Whether or not the judgment of the Court of Appeals conforms with the principles set forth in the net worth decisions.[2]

STATUTE INVOLVED

INTERNAL REVENUE CODE OF 1939:

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to collect and pay over tax, or attempt to defeat or evade tax.*—Any person

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[2] On the remand, the Court of Appeals did not pass upon the other issues raised in this petition. In many respects the present petition is identical with the original petition filed on July 12, 1954. The Government will rely upon its original brief in opposition, with particular reference to its arguments numbered 1, 3, 5, 6, 7. The numbered arguments indicated were in answer to those now repeated by petitioner as V through IX, respectively. Reference is made to the Government's original brief in opposition (No. 209, October Term, 1954) for the questions presented, statute and rule involved, statement of facts and argument concerning the issues which have already been presented.

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required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U. S. C. 1952 ed. 145.)

STATEMENT

Reference is made to the Government's prior brief in opposition in this case (No. 209, October Term, 1954) for a statement of the facts involved. Suffice it to say that the Government proved income tax deficiencies for the years 1945, 1946 and 1947 by establishing through direct evidence the amount of petitioner's unreported income from the rental and sale of taxicabs operated by a corporation owned and controlled by him, together with unreported income from his wholesale liquor business which he operated in another's name. Although petitioner challenges (Pet. 24-27) the sufficiency of this evidence, a detailed statement is omitted because the Court of Appeals has twice reviewed this evidence and found it sufficient, and for the addi-

tional reason that it does not present a question ordinarily reviewed by this Court. The Government also introduced two financial statements which petitioner had given to a brewery company and evidence of large expenditures.

ARGUMENT

Petitioner contends (Pet. 3-4, 15-24) that his starting net worth was understated by the exclusion of cash on hand, that his ending net worth was overstated by the inclusion of inflated market values, that the trial court erroneously refused requested instructions on the net worth and expenditures theory of proof, that the Government failed to make a reasonable investigation of leads as to petitioner's starting net worth, that the trial court erred in permitting the jury to see charts which had not been introduced into evidence, and that the Court of Appeals shifted the burden of proof to the taxpayer to explain the starting cash on hand and cash expenditures.

As the trial judge remarked (Tr. 2318),[3] "This is not a net worth case." The Court of Appeals also recognized that the case was not tried on the net worth theory. (Pet. 40.) The admission of circumstantial evidence regarding petitioner's net worth increases and his cash disbursements was merely corroborative of the direct evidence upon which the Government placed reliance. The crime of tax evasion having been proved by independent evidence, it is unnecessary to apply the safeguards surrounding the net worth and expenditure theory

[3] "Tr." is used to refer to the original transcript.

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of proof as if the government's case depended on that accounting. *United States* v. *Calderon*, 348 U. S. 160. The only question is whether the evidence provided by the taxpayer's financial statements and expenditures was relevant in supporting the government's case. The court below properly held it was.

With regard to the charts, the trial court gave "guarding instructions" that they were not evidence but that permission to use them had been granted for the purpose of explanation only. (Tr. 1302, 1321, 1327-1328.) *Holland* v. *United States*, 348 U. S. 121.

CONCLUSION

For the reasons stated in the Government's original brief in opposition as well as those appearing above, it is submitted that the decision of the court below is correct and presents no conflict. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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MAY, 1955.

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